

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY E. EALY,

Plaintiff,

vs.

STEVE DIORIO, et al.,

Defendants.

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Case No. 3:09cv052

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #3) AND
OVERRULING PLAINTIFF'S OBJECTIONS THERETO (DOC. #4);
PLAINTIFF'S DEFAMATION CLAIM DISMISSED WITHOUT PREJUDICE
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE
GRANTED UNDER FEDERAL LAW; PLAINTIFF'S CLAIM RELATING TO
HIS BEING BARRED FROM CITY HALL DISMISSED WITH PREJUDICE,
AS BARRED BY STATUTE OF LIMITATIONS; JUDGMENT TO ENTER
ACCORDINGLY; TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the
Magistrate Judge's Report and Recommendations, filed February 10, 2009
(Doc. #3), as well as upon this Court's thorough *de novo* review of its file and the
applicable law, said Report and Recommendations are adopted in their entirety.
The Plaintiff's Objections thereto (Doc. #4) are overruled.

In ruling as aforesaid, this Court makes the following, non-exclusive,
observations:

1. No matter the immunity of the Defendants, a defamation action, or a conspiracy to commit defamation, as is apparently alleged by Plaintiff, is not cognizable under 42 U.S.C. Section 1983 or 1985, under federal law. Nor could a defamation action, bottomed upon a common law action, be filed in federal court, as there is no diversity of citizenship between the parties. Such an action, assuming the statute of limitations has not expired, may be brought in a state court of competent jurisdiction.

2. Any and all claims relating to the Plaintiff's being barred from City Hall are barred by the applicable two-year statute of limitations which applies to Civil Rights actions under 42 U.S.C. Section 1983 and 1985, regardless of whether the Defendants, any one or more or all of them, enjoy immunity.

WHEREFORE, based upon the aforesaid, judgment is to enter in favor of Defendants and against Plaintiff, dismissing Plaintiff's defamation claim, without prejudice to refiling in state court of competent jurisdiction, for failure to state a claim upon which relief can be granted under federal law and, with reference to Plaintiff's claim of being barred from City Hall, with prejudice, as barred by the applicable statute of limitations.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

March 3, 2009

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies mailed to:

Larry Ealy, *Pro Se* Plaintiff